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BALANCING SUSTAINABILITY AND PROSPERITY: THE IMPACT OF THE PETROLEUM INDUSTRY ACT, 2021 ON NIGERIA'S HOST COMMUNITIES

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I. ABSTRACT

This paper examined the inconsistencies in the Petroleum Industry Act, 2021 and the Nigeria Upstream Petroleum Host Communities Development Regulations, 2022 aim at fostering sustainable prosperity and harmonious relationship between the settlers and the host communities in Nigeria. The work adopts doctrinal method wherein the researchers deploy primary and secondary data. In the primary data, the work used information from various statutory provisions as well as case laws. In the secondary source, the research adopts and analyses information from textbooks, journal papers and internet materials. Also, the researchers interviewed some board of trustees (BoT) members of the host communities' development trust and the natives in the host communities with a view to elicit data on the impact of the PIA, 2021 and its regulation 2022 on the welfare and wellbeing of the host communities. The research found that the PIA 2021 chapter 3 and NUPHCDR 2022 donate powers to the Settlor and the BoT for example, to incorporate the HCDT. Again, the Act makes the Settlor's representatives the principal signatory to the account of the HCDT. The paper recommends, among other things, that besides the novel host communities development provision, there is need to review the Act to cloth the host communities with the function to establish the trust and appoint members of the HCDT. And, the NUPRC should be made to play supervisory role over the trust, while the settlor's power should be restricted to the payment of the prescribed actual annual operating expenditure into the trust fund:

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II. KEYWORDS

Host Communities, Sustainable Prosperity, Petroleum Industry Act, Nigeria Upstream Host Communities Development Regulations, Board of Trustees, Management and Advisory Committees.

III. INTRODUCTION

The research is borne out of the need to address the obvious negative impact of the overbearing powers donated to the Settlor under the PIA, 2021 (Chapter 3) on the host community and the Board of Trustees of the host communities development trust (HCdT). The objectives of the research, therefore, are to bring to the fore the unintended challenges currently being faced by the host communities arising from the overwhelming powers that the Settlers are clothed with and to make recommendations for a review of the PIA, 2021 and its regulations 2022.

This seminal paper will also critically interrogate the extent to which the international, regional and national conventions, treaties, laws, regulations and policies could drive the legal and legitimate determination and attainment of socioeconomic and sustainable prosperity within the host communities in Nigeria's Niger Delta region. This work deplores doctrinal, descriptive, prescriptive and analytical research methods. This paper draws support from the provisions of the Petroleum Industry Act, 2021³ "the Act" and the Nigeria Upstream Petroleum Host Communities Regulations, (NUPHCDR) 2022⁴ etc.

About six decades ago, the United Nations General Assembly (UNGA) passed a resolution which sought to promote and encourage economic and political self-determination by member states in relation to exploration and sustainable use of their natural resources without any undue external influence.⁵ The said resolution or declaration is generally referred to as "permanent sovereignty right of states over their natural resources". By extension, state members of the United Nations (UN) have been

³Federal Republic of Nigeria, Official Gazette No.142. Vol.108 of 27th August, 2021. Published by the Federal Government's Printer, Lagos, Nigeria.

⁴ Federal Republic of Nigeria, Official Gazette No.114. Vol.109 of 24th June, 2022. Published by the Federal Government's Printer, Lagos, Nigeria.

⁵ (UNGA Resolution 1803 of 14th December (XVII) 1962).

enjoined to exploit their natural resources by themselves - as an index of economic and political self-determination and for the purposes of driving national development. Therefore, for such self-determination by state members of the UNGA to be inclusive, the host communities (oil and gas bearing communities) and the people the people of the host communities wherein the natural resources are explored and exploited should be carried along and/or catered for.

It could be recalled that the British colonial masters up until Nigeria gained Independent in 1960, arguably, sought to justify the imperatives of the colonial administration in the Nigeria against the backdrop that there was a need to checkmate slave trade around the world. Paradoxically, under the guise of such perceived policy to wit: to outlaw slave trade, the colonial administration brought along with-it education and religion - which thrived more in the southern part of Nigeria. While these tools were deployed in Nigeria, the sons and daughters of rich Nigerians and the children of the colonialists were the major beneficiaries of such educational opportunities.

Also, the colonial administration established foreign companies such as the UAC, UTC and Leventis⁶ etc. in Nigeria with the sole purpose of carrying out economic activities in Nigeria and for export of their produce to Britain, for use by their home industries⁷. The colonial masters' naked economic exploitation around the world partly necessitated the UNGA's declaration of permanent sovereignty of states over their natural resources. The emerging Nigerian state was to take advantage of such UNGA declaration not only for the benefit of the Federal Government of Nigeria (FGN) but also to escalate its benefits to the beneficiary states and the host communities.⁸

⁶ (Nwakunor, 2015) *Forgotten Brides: Companies that colonisation Built in Nigeria*

⁷ Steyn, P (2009) Oil Exploration in Colonial Nigeria, C. 1903-58 in *Journal of Imperial and common Wealth History* <https://www.researchgate.net . 249.Retrieved> on 9th March, 2024.

⁸ Bagia, T. M. and Dike S. (2020) *The principle of Permanent Sovereignty over Natural Resources (PSNR): How far with Nigeria's Petroluem Industry?* In *Journal of Jurisprudence, Internaltiona Law and Contemporary Issues* 14(1), 1-19.

The Organization of Petroleum Exporting Countries (OPEC)⁹ equally directed its members to ensure that they take ownership of petroleum exploration and exploitation into their hands. OPEC further admonished its members not to depend on the payment of royalties and taxes under the then existing concession arrangements with the International Oil Companies (IOCs). Instead, the members were encouraged to develop state participation policy and law in the oil and gas sector. With state participation policy, the Nigerian Government embarked on joint venture agreements (JVAs) and production sharing contract (PSCs) respectively. However, the JVAs between the FGN and the IOCs make the IOCs the operators, while the FGN becomes the non-operating partner in the JVAs. The JVAs arrangement is usually negatively impacted by the mandatory payment of cash calls - amount to be contributed by the FGN as its counterpart or equity funding towards oil exploration by the operator - IOC. The implication has been that whenever the FGN becomes cash strapped such cash calls will remain unpaid and payable. The delay and/or backlog of such cash calls usually culminate in attendant impairment of new oil exploration and low oil production in the country. But in the 90s, the introduction of the PSCs, which is an arrangement whereby the IOCs fund the entire oil exploration and production including bearing all the inherent risks and profits brought about less demand for cash calls from the FGN.¹⁰ And the FGN still collects royalties, taxes and profits from its equity contribution.

Notably, the incremental oil production policy seeks to encourage the IOCs to search for oil, win the oil, exploit the oil and share the profits between themselves and the FGN.¹¹ This policy however leaves the oil and gas production in the hands of the IOCs as operators, while the FGN's representatives remain merely to ensure that the FGN's share of profit oil or cash is channeled to the coffers of government through the federation allocation account.¹²

⁹ *Being an address delivered by Dr. A. Silva-Calderdn. OPEC Secretary General to the Institute of Petroleum Autumn Lunch, London on 22nd October, 2023*

¹⁰ Ogunleye T. A. (2015) *A Legal ananalysis of production sharing contract arrangements in the Nigerian Petroleum Industry in Journal of Energy Technologies and Policy* Vol. 5, No. 8.

¹¹ (Belo O. (2016) *Using incremental Production revenue to settle cash call problems is an incentive – operators.* <https://businessday.ng .article> Retrieved on 9th march, 2023.

¹² 1999 Constitution FRN (as amended) Section 162(2).

State participation in oil and gas exploration has enabled the emergence of many Nigerian capitalists in the oil and gas sector. The Nigerian capitalists however depend so much on government's contracts and patronage to survive. The transactional relationship between these capitalists and the FGN has led to hydra-headed corruption in the country.¹³ This is evidenced most times in inflated contract prices, for instance, in shipment of crude oil and import of the refined crude into the country.

Overtime, this transactional relationship led to rapacious oil and gas exploration in the Niger Delta region with attendant serious and strident agitations and criminal assaults against the emerging Nigerian states. Furthermore, the then colonial Government Secretary of States, prior to the 1960 Independence, appointed Sir Henry Willink's Commission¹⁴, to look into the perceived fears of the minorities - who had agitated for more states to be created so as to accommodate their interest and also allay their fears. Sir Willink's Commission of 1958 recommended among other things, that a Niger Delta Development Board (NDDDB) should be established and included in the 1960 Constitution of Nigeria. The Board was for the amelioration of the socio-economic challenges and to tackle the petroleum related environmental degradation in the region. The report however, maintained that it would be dangerous to deny the region such intervention otherwise their reaction against the Nigerian state would be capable of leading to more catastrophes. Notably, the Board was meant to last for 9 years starting from 1960. Ironically, the board was poorly funded, and its lifespan was however, brought to an abrupt end due to the outbreak of the Nigerian Civil War in 1966.¹⁵

It is equally worthy of note that several other intervention agencies had been established after the Board to tackle the economic and environmental challenges in the oil-bearing states in Nigeria. These intervention agencies include: the Presidential Task Force (PTF) alias "1.5%", Oil Mineral Producing Areas Development

¹³ Kessler, S. (2024) 10 Characteristics of Transactional Relationships <http://www.marriage.ion/> Retrieved on 9th March, 2024

¹⁴ Sir Henry Willink's reports of the Commission appointed to enquire into the fears of minorities and means of allaying them - <http://www.worldcat.org>title>ocle>. Retrieved on 11th February, 2024.

¹⁵ <https://www.worldcat.org>title>ocle>, 2023 and Akpan, 2021. *Supra* note 6

Commission (OMPADEC)¹⁶ - with 3% funding threshold, the Niger Delta Development Commission (NDDC)¹⁷, Amnesty Programme and the Ministry of Niger Delta Affairs. Also, the 1999 Constitution (as amended)¹⁸ and Allocation of Revenue (Federation Account etc) Act¹⁹ have equally made it mandatory for the payment of at least 13% oil derivation money to the oil bearing states in Nigeria. Be that as it may, a close look at the philosophy and intendment behind the creation of the various intervention agencies undoubtedly show a deliberate state policy to channel money and associated development to the oil and gas producing states and not the actual host communities within the oil and gas bearing states. This development has wittingly or unwittingly, created unrelenting controversies between the NDDC and the state governors in the region stemming from indiscriminate road construction and duplication of projects in the region.²⁰

Several reports by the National Assembly committees²¹ and Civil Society Organizations (CSOs) have alluded to the fact that all the intervention agencies in the region abysmally failed due to corruption and nepotism allegedly perpetrated from successive governments till date in collaboration with the leadership of the agencies under reference. Also, bad governance, political interference and failure to carry the host communities along in needs assessment, projects design and execution by the various leaderships of these agencies contributed largely to the failure of these agencies. As a result, the agencies have ended up recording more abandoned projects than executed ones. This scenario has brought to the fore curses rather than blessings to the people of the host communities.²² Ironically, the socio-economic situation in the oil and gas host communities represents a compendium of a life of squalor, crisis of

¹⁶Decree No.23 of 9th July, 1992 S.2

¹⁷Act No.6 2000 S.7 (1)(a-j)

¹⁸ C.23 LFN 2004 S.162(2)

¹⁹2nd January, 1982 (See official Gazette No. 8, Vol. 69, 18th February, 1982 – Part A).

²⁰ Johnson, D. (2021) Era of duplicating project in Niger Delta Region over-NDDC <http://www.vanguardngr.com/era> Retrieved on 9th March, 2024

²¹ Shibayan, D. (2023) Senate sets up panel to probe unauthorized spendings by NDDC <http://www.thecable.ng/sc>. Retrieved on 9th March, 2024.

²² Iroanusi, Q. (2020) NDDC vs National Assembly: How an investigation got messy www.premiumtimes.ng.com. Retrieved on 9th March, 2024.

underdevelopment and inequities among the people of the host communities in the oil-rich Niger Delta region.

Perhaps, the situation in the host communities in Nigeria, among other host communities across the world, necessitated the United Nations (UN) in the year 2000 to have signed the erstwhile Millennium Development Goals (MDGs) and thereby committed the then world leaders, to have signed on to fight hunger, poverty, disease, illiteracy, environmental degradation and gender apathy.²³ The MDGs had 8(eight) goals, which were to last from 2000-2015. The goals were implemented in Nigeria with the creation of governance structures in the Presidency. The Nigeria's development partners invested money in an attempt to meet some of the goals as applicable to the social and economic wellbeing of indigent Nigerians. However, not much measurable success was achieved at the host communities' level before the UN initiative was superseded by the Sustainable Development Goals (SDGs) in 2015.²⁴

So far, the SDGs in Nigeria have remained more topical in many academic papers and policies of the federal, state and local governments. But not much to show about the level of implementation of the SDGs as it affects the host communities. For instance, hunger, poverty and people living in squalor are still pervasive and prevalence in the host communities in the Niger Delta region. Incidentally, this appalling situation has remained unabated in the region, while the governors in the region have continued to focus developmental attention in the cities and locations where politically exposed persons and their cohorts reside. For example, most primary school and health care buildings in the host communities have been poorly funded with attendant low school enrollment and near zero health care assessment by the people of the host communities contrary to the SDG goals on education and health. A case in point is that Nigeria has 10.2 million out of school children at primary school level and 8.1 million at Junior Secondary School level. Indeed, in every 5 out of school children in

²³ Mayers, J. (2003) *Achieving the Millennium .Development Goals*. <https://www.iiied.Retrieved> on 14th March, 2024.

²⁴ Oleribe, O.O and Taylor-Robinson, S. D (2016) *Before Sustainable Development Goals (SDGs): why Nigeria Failed to achieve the Millennium Development Goals (MDGs) in Pan African Medical Journal*. <https://www.researchgate.net.320.Retrieved> on 14th March, 2024.

the world represents Nigeria. Also, Nigeria infant mortality rate is equally very high as compared to other countries across the world.

IV. ANALYSIS OF CHAPTER THREE OF THE ACT, 2021 ON HOST COMMUNITIES DEVELOPMENT (HCD) PROVISION AND NUPHCDR, 2022.

The continued search from about 2010 by the FGJ for an enduring panacea to the lingering agitations and the associated criminal activities usually perpetrated by some youth groups in the Niger Delta region, arguably, led to the enactment and signing of the Act on 16th August, 2021 by the National Assembly and the President Federal Republic of Nigeria. The Act has 5 (five) chapters and 8 (eight) schedules.

For this paper, the focus is on chapter 3 of the Act – which deals with Host Communities' Development (HCD). It is worthy to be observed that while the traditional institution in the host communities was recognized under the memorandum of understanding implementation, the Act and its Regulations do not have any provision for Traditional Rulers, State and Local Governments. The federal Government through the Commission supervises the activities of BoTs and the HCDTs.

The objectives of the HCD provision are to wit:

to foster sustainable development within the host communities; provide direct social and economic benefits from petroleum operations to host communities; enhance peaceful and harmonious co-existence between licensees or lessees, and host communities and create a framework to support the development of host communities.

These objectives are essentially the drivers of sustainable development goals as it could be gathered from a community reading of the provisions of the Act. For instance, the following sections of the Act clearly show the intendment of the lawmakers to bring down sustainable development to the host communities in the Niger Delta region through the instrumentality of law pursuant to provision of the

Act²⁵ and thereby put to an end the era of memorandum of understanding (MOU) that used to regulate the implementation of agreed programmes and schemes between the settlers and the host communities in the Niger Delta region.

It is important to note the status and relationship between the Settlor and the host communities. The oil and gas companies are by law incorporated and licensed to explore and exploit petroleum both upstream and downstream in Nigeria. They pay oil revenue into the federation account and from there 13% derivation money is paid monthly to oil and gas bearing states in Nigeria. However, due to un-remitting agitations by the youths and people of the Niger Delta region, which have led to destruction of oil production facilities and high level of criminality in the region, the Federal Government decided to repeal and re-enact the PIA, 2021 and its regulations, 2022 with a view to providing for the payment of 3% annual operating expenditure of the preceding financial year in the upstream petroleum operation to the HCDDT board of trustees so as to provide social, economic and environmental needs of the host communities.

However, the Act 2021 and its regulations, 2022 clearly donate so much powers to the Settlor to the extent that the intended benefits in the Act and its regulations have been threatened with attendant negative impact on the host communities. Paradoxically, the Settlor in practical terms and law define what, how and when to provide the intended social and economic dividends from the upstream petroleum operations as it affects the host and appurtenant communities. Unarguably, this therefore elevates the Settlor to the position of a dominant right holder while the host communities are reduced to the position of subservient right holder. For example, the Settlor's representative is the principal signatory to the HCDDT's account and this pre-supposes that the BoT's chairman or any other trustee's signature is dispensable, as the case may be. Also, where the Settlor is not satisfied with the decision of the BoT which is the highest organ in the HCDDT, then such a decision of the BoT cannot see the light of the day. This for all intents and purposes makes the Settlor a pseudo auditor with attendant time lag and decision lag.

²⁵ S.239 (3)(a)

It is also important to state that the benefits accruable from the Act 2021 and its regulations 2022 are *stricto sensu* meant for the host communities where the oil company area of operation situates while the neighboring communities to the operation area of the Settlor are regarded as *appurtenant* communities because the activities of the Settlor usually impacts positively or negatively on such communities. However, in practice, persons from such *appurtenant* communities are usually and normally validly selected and nominated into the organs of the HCDT as members only.

SECTIONS OF THE ACT	ABRIDGED PROVISIONS OF THE ACT	NUPHCDR, 2022	REMARKS
S.234(1)(a&d)	To foster sustainable prosperity within the host communities and to create a framework to support development of host communities. Also, the Host Communities Development Trust (HCDT) as one of its objectives is to finance and execute projects for the benefit and sustainable development of host communities.	Regulation (1)(a) provide for substantive and procedural requirements for the establishment and administration of the trust and the Fund for Nigeria Upstream Petroleum Host Communities; Outline the parameters for the administration and safeguard of the Fund; prescribe a grievance resolution mechanism for settlement of disputes between host communities and settlers.	It would be recalled that the Petroleum (Drilling and Production) Regulations²⁶ provide among other obligations for the training of Nigerians and award of scholarship subject to the approval of the relevant Minister in Nigeria. Again, the Oil Mineral Producing Areas Development Commission (OMPADEC)²⁷ had it functions and powers geared toward the development of the actual local communities in consultation with the state and federal government.

²⁶

Regulations 22 – 29: LN 69 of 1969.

²⁷

9th July, 1992, Section 2

		Regulation (10)(4) requires that the Trust and the Fund should be equitably administered and managed by the BoT. Regulation (11) (1), (2), (3) & (4) provides conditions on the winding up and dissolution of the Trust and the Fund. Regulation (20) (1), (2) & (3) mandates the settlor within 6 (six) months following the receipt a license or a lease to carry out host communities' needs assessment so as to determine the social, economic	Equally, the Niger Delta Development Commission (NDDC)²⁸ has it primary function as the development of the "Niger Delta area". Similarly, the Constitution of Nigeria 1999 (as amended)²⁹ and the Allocation of Revenue (Federation Account etc) Act make provision for the payment of 13% oil and gas derivation money to the beneficiaries' states. With exception to OMPADEC, the rest of the legal frameworks or intervention agencies designed as vessel for the development of the oil and gas producing state in the Niger Delta
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Decree No. 6, 2000, Section 7(1) a j.

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		and environmental challenges of each of the host communities Regulation (21) (1) (a-g) requires that every settlor should provide a detailed timeline of 5 years for project and schemes under Communities Development Plan (CDP) culled from needs assessment earlier conducted by the settlor, subject to the approval of the NUPRC (hereinafter called “the Commission”). Regulation (34)(1-9) deals with the investment of the reserve fund and reporting obligations. Regulations (37) & (39) respectively, deal with Act of vandalism or	region focus developmental attention on the oil and gas producing states only. This explains why there was no conscious efforts made starting with NDDB, towards the development of the actual host communities in the region. With the enactment of the Act, with separate provision made for the host community development, there has been a clear departure from the hitherto intervention mechanisms for the region. The Act, apart from a number of inconsistencies and distortions inherent in it, has the potentials of promoting and deepening sustainable prosperity within the host communities.
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		sabotage against the activities or operation of the settlor.	Here the Regulations 37 and 39 clearly prohibit acts of criminality against the facilities and operational activities of the settlor in Regulation 37 and in Regulation 39 it provides for disputes resolution mechanism.
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SS.244(b)& 240(1)	Provide for the allocation of 20% out of the 3% actual annual operating expenditure (opex) of each settlor to be utilized by a Fund Manager (FM).		Here the Act seeks to implement sustainable development principles and economic prosperity for the future and the present people in the host communities.
S.246(1)	A Fund Manager will have to be appointed by the Board of Trustees (BoT) on the recommendation of the Management Committee (MC) to invest the 20% reserve fund as the fund accrues yearly.		Here the Act seeks to streamline line of authority, due process and transparency.

1. Some operational challenges and panacea of the HCD provision in the PIA, 2021 and NUPHCDR 2022

SECTION OF THE ACT 2021	ABRIDGED PROVISIONS OF THE ACT	ABRIDGED PROVISIONS OF NUPHCDR, 2022	REMARKS
S.257(1)(2)(3)&(4)	Provides that the settlor shall carry out needs assessment for each of the host communities to determine their specific social, economic and environmental challenges.	Regulation (20)(1-8) provides further details on the needs assessment expected to be conducted by the settlor within 6 (six) months upon the grant of a license or lease to the settlor. Regulation (21) (1-3) also dwell on the requirements of developing the CDP from the needs assessment by the settlor subject to the approval of the Commission.	The Act and its regulations make it mandatory for each settlor who is granted a license or petroleum mining lease and whose area of operation is located in or appurtenant to any community or communities, to conduct in needs assessment within 6 (six) months upon the receipt of the license or lease. The needs assessment enables the settlor to determine the peculiar social, economic and environmental challenges of the host communities.

		Regulation (22) provides the basis for the determination of the fund sharing matrix by the settlor to include equity and economic principles.	After the conduct of the needs assessment with the active involvement of the people of the host communities including the community leaders, women, youths via town hall meetings, the settlor is expected to then prepare the required assessment and afterward produces a Communities Development Plan (CDP) for a 5-year period for the host communities subject to the approval of the Commission. The objectives of the needs assessment are to wit: to provide specific needs of the host communities, ascertain the effect of proposed petroleum operations and its impact on the host communities and provides a strategy for addressing the identified needs and effects of petroleum operations in the host
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			communities.³⁰ These objectives are in line with the Environmental Impact Assessment Act³¹ which requires that before projects are carried out the environmental impact of such projects should be first carried out to ascertain their impact on the environment and the environmental impact on the people. The CDP is usually not cast on stone because it can be amended in the course of its life-span subject however, to prior to the approval of the Commission. Also, the settlor is expected to provide a distribution matrix for the sharing of the trust fund which is made up of the 3% opex, donations, gifts or profits
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³⁰ Section 251(1) and (2) (a – c)

³¹ Decree No. 86 of 10th December, 1992. Section 2(1) & (2)

			from the reserve fund investment by the fund manager. It is noteworthy that while the Act does not provide the basis for the determination of the fund matrix, the regulations have attempted to provide the basis as equitable and economic principles. The question then will be what constitutes equitable and economic principles? Both the Act and the Regulations do not define the terms equitable and economic principles. However, a settlor is defined as a holder of an interest in a petroleum prospecting license or petroleum mining lease whose area of operations is located in or appurtenant to any community or communities.³² From the foregoing, it is safe to conclude that the economic interest of
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³² Section 318 of the Act

			the settlor lies more in its area of operations that is, the immediate host communities, while its equitable interest relates to the appurtenant communities where its operational activities impacts such communities negatively. Therefore, in order to assuage the impact of the settlor's activities in the appurtenant communities, it is presumed the Act requires that representatives from the appurtenant communities too be made members of the BoT, management and the advisory committees of each trust established.³³ The HCD provision conferred so much powers on the settlor, and arguably makes no major difference between the defunct memorandum of understanding (MOU) and the Act.
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³³ Sections 242(1), (2) & (3) (a), 247(1) (2) (a) and 249(1) and (2). See also regulation 12(1) (a-b), regulation 18(2) (a) and regulation 19(33)

			Recall that the MOU evidenced the Corporate Social Responsibility (CSR) which existed between the settlers and the host communities – is oil and gas sector. This was the preferred document or mechanism for host communities development plan and funding. Going by the fact that the host communities in the region had agitated for decades for a better and an inclusive legislative framework, which could address and tackle the social, economic and environmental challenges in the region, the federal government decided to repeal the then existing petroleum Act of 1969 and enacted the PIA 2021, with a special purpose HCD provision aimed at addressing the concerns of the host communities, directly and frontally.
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			However, the Act in an attempt to tackle those age-long concerns and agitations of the people of the region, seems to have succeeded in changing the name of the MOU into the present HCD in chapter 3 of the Acts and thereby clothing it with a semblance of legality-which by all intents and purposes appears to be a Greek gift. The purported objectives of the HCD in section 234 of the Act are still a far cry and appear unattainable because of glaring distortions and inconsistencies both in the Act and its regulations. Moreso, it is because the trust administration is set up and largely controlled by the settlor
S.252(a-g)	Also, provides for the development of the host communities		Here no community can demand the implementation of any alien project by

	development plan (CDP). The CDP is to be culled from the needs assessment contemplated in Section 251 of the Act generally. The CDP is to be submitted by the settlor to the BoT and the CDP forms the basis for projects conception and execution. Therefore, adherence to the CDP is sacrosanct.		the BoT without formal approval first sought and obtained from the Commission.
S.245(1)&(2)	States that the settlor shall provide to the BoT a matrix for the sharing of the trust fund to each of the host communities for which the trust is formed or established. The BoT is expected to utilize the fund matrix in sharing the capital fund to each of the host communities via implementation of projects and schemes.		Here opinions differ on the actual utilization of the 75% capital fund by the people in the oil and gas Local Government Areas (LGAS) .While the Act stipulate that the settlor should determine the host communities and the Act further makes it mandatory that the 75% capital fund be utilized for the provision of projects in the host communities, the people in the host communities feel the capital fund

			should be utilized for the benefit of all the communities in the LGAs. However, a look at the term “host communities” as defined³⁴ in the Act and NUPHCR does not purport to spread the social and economic benefits intended under the Act to all the communities in a particular LGA.
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4. Some notable inconsistencies or distortions in the PIA 2021 and NUPHCDR, 2022

SECTION OF THE ACT 2021	ABIDGED PROVISIONS OF THE ACT, 2021	ABRIDGED PROVIIONS OF THE NUPHCDR, 2022	REMARKS
S.235(1)	It says that the settlor shall incorporate the host communities’ development trust. (HCDT) (As at February, 2024, a total of 103 HCDTs	S.235(4) says paradoxically, that for the purposes of setting up the trust, the settlor in consultation with the host communities, appoints and	The Act confers the power to incorporate the trust on both the settlor and the BoT. even though the first BoT is the creation of the settlor in

³⁴

Section 318 of the Act and NUPHCDR, 2022 Regulation 41(2)

	have been incorporated by 35 settlors with the Corporate Affairs Commission	authorizes a BoT which shall apply to be registered by the Corporate Affairs Commission as a corporate body. And subsection (5) of the same section further states that the BoT shall register the trust in the name of the communities alongside the phrase “host communities’ development trust”.	consultation with the host communities, the second BoT members are to be nominated by the settlor in consultation with members of the advisory committee³⁵. Under the common law, usually the owner of the property and/or the court as the case may be, has the legal right or power to select and appoint trustees under a trust deed or instrument and/or the order of a court of competent jurisdiction. Equally, a trust is usually executed for the benefit of a named person(s) or institution(s). However, under the Act, the HCD provision is deemed sui generis-that is, this trust is a different kind of its own.
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			Furthermore, under the present trust arrangement, the host communities are made to become joint owners of the oil and gas to the extent of the payment of 3% Opex of the settlor's actual operating expenditure of the preceding financial year in the upstream petroleum operation wherein the trust is established. Coincidentally, the Act seems to elevate the settlor beyond the level of a customary tenant to that of a dominant right holder, while the host communities become subservient right holders³⁶. Notwithstanding the numerous benefits under the Act, the statutory elevation of the settlor to the position of a dominant right holder by omission
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³⁶ Izuora, C. and Anthony-Iko (2024). Post Petroleum Industry Act... Operators Exploiting Gaps to Under-declare crude output post-petroleum. Leadership.ng. retrieved on 21st March, 2024.

			or commission, over the host communities, has covertly or overtly impacted against the smooth implementation of HCD provision in the Act. There is therefore the need to amend the Act so as to cloth the host communities with the power to establish the trust and appoint the BoT, while the settlor is expected to make its yearly contribution to the trust fund with the Commission playing a supervisory role over the trust. The envisaged amendment will go a long way to correct inherent offensive provisions in the HCD provision of the Act. Also, the Commission's role will be limited to the enforcement of the statutory fines against any erring settlors as contemplated in Section 217 of the Act.
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S.242(3)(b)	Confers the power to determine, among other things, the remuneration of the BoT on the settlor.	Regulation (25)(5)(a-c) states that the administrative cost of 5% of the 3% opex standing to the credit of the trust fund shall be partly paid out as sitting allowance to the BoT, payment of stipends to the Advisory Committee and payment of remuneration to the Management Committee etc.	Much as the intent of the NUPHCDR, 2022 is to aid or ease the understanding and implementation of the Act, it should however, not directly or indirectly conflict with its establishment Act. For instance, the Act provides remuneration for the three governance structures to wit: BoT, Management and Advisory Committees. However, the Commission in its wisdom decided to prescribe, the payment of sitting allowance to the BoT members, stipends to the Advisory Committee Members and salary to the Executive Members of the Management Committee. ³⁷ The Commission's justification for the payment of salary to the 4(four) executive members of the management committee that is, the
S.247(4)(b)	Confers that power to determine the remuneration of the management committee on the BoT.		
S.249(2)(b)	Confers the power to determine the remuneration of the Advisory Committee on the management committee.		

			Project Manager, the Accountant, the Legal Officer and the Finance Manager, is that they are professionals. Ironically, the Act stipulates that the duties of the Management Committee are to be performed on an ad-hoc basis.³⁸ Also, Regulation 27(e) of the NUPHCDR, 2022 states that the meeting of the management committee can be reduced to 4 (four) meetings in a year if the fund to run the Trust is meagre. This goes to show that the justification for the payment of the executive
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Section 248 Act, 2021

			members as professionals is fluid and nebulous. Incidentally, there are some trusts where administrative funds is so small that the 5% administrative funds can barely pay for sitting allowances of the members of BoT, Management and Advisory Committees.
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5. Some notable inconsistencies or distortions in the NUPHCDR, 2022

REGULATIONS	ABRIDGED PROVISIONS OF THE NUPHCDR, 2022	INCONSISTENCIES IDENTIFIED	REMARKS
11(1-6)	Winding up and dissolution of trust and the fund. Here, the regulation stipulates that the trust could be dissolve by both the trustees and the settlor with the approval of the	Indeed, while the trust can only be set up in consultation with the host communities as provided for in the Act, the regulation has omitted the host communities when it comes to	There is a need to bring the regulation under review into conformity with the provision of the Act as contained in Section 235.

	Commission. The approval may be granted or refused based on certain reasons and factors.	a determination of the reasons and/or factors relating to winding up and dissolution of the trust.	
23(1)(a) Sub-regulation (3)	Says that the settlor shall establish the host community development trust fund within one month of the incorporation of the trust. Requires the BoT to maintain 4 (four) accounts in the same commercial bank wherein the settlor has established the trust fund. The 4 (four) accounts are: (a) Collection Account Fund, - into which the settlor pays its 3% to the host communities trust (b) the Capital Account Fund into which 75% of the 3% Opex is paid to the host communities development trust for capital projects and scheme by the	Regulation 24 (1) – Paradoxically, vests the same power in regulation 23 to establish the trust fund in the BoT wherein it mandates the settlor to pay its first 3% Opex into the trust fund one month after the BoT has established the trust fund.	The two regulations that is, 23 and 24 respectively are clearly conflicting and a community reading of the two regulations brings out inconsistencies and conflict of roles between the settlor and the BoT to the extent of who has the power to establish the trust fund. Besides, the interpretation section of the NUPHCDR in regulation 41(2) has created additional ambiguity when it defines the term “Fund” to mean the host communities development trust fund established by the settlor pursuant to section 240(1) of the Act.

	BoT. (c) Reserve Account Fund into which 20% of the 3% Opex is paid for utilization by the Fund Manager as appointed by the BoT on the recommendation of the management committee of the trust. (d) the Administrative Fund Account into which 5% of the 3% Opex is paid and to be managed by the settlor for payment of sitting allowance for BoT members, stipends for Advisory Committee Members and purported salaries for 4(four) Executive Members of the management committee as well as allowances for the rest of the non-executive members of the management committee of the trust.		But the cited section 240(1) of the Act rather states that the Constitution of each host communities' development trust shall establish a fund comprising one or more accounts. The section does not state nor purport to imply that the settlor shall establish the fund. Therefore, the provision in the regulation under review has the potential of creating disharmony and avoidable legal arguments between the settlor and BoT of a trust. Indeed, it is the settlor that has the wherewithal and the legal obligation to ensure transparent management of the 3% Opex.³⁹
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Sub-regulation (5 - 7)	Spells out the document and information that must be supplied to the Commission upon the establishment of the fund.		Therefore, it goes without saying, that the settlor has a comparative advantage of establishing the fund. Moreso, in law where they are equal equities, the first in time prevails. In this wise, regulation 23 could supersede regulation 24.
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V. A COMPARATIVE ANALYSIS OF NIGERIA'S LOCAL CONTENT LAW AND POLICY AS WELL AS THE PIA, 2021 HOST COMMUNITIES DEVELOPMENT NOVEL LOCAL CONTENT PROVISION VIS-À-VIS THE LOCAL CONTENT LAWS AND POLICIES OF SELECTED OTHER CLIMES.

Many developed and developing countries have enacted laws and made policies on local content requirements (LCRs) in the oil and gas sector of their economic systems. The importance of the LCRs in the economic or national development of any nation cannot be overstressed. However, there are some setbacks or challenges associated with (LCRs) in terms of direct or indirect conflicts with the terms of existing regional or international agreement, such as the General Agreement on Tariffs and Trade (GATT), Trade Related Investment Measures (TRIMs), World Trade Organization (WTO) and Common Market for Eastern and Southern Africa (COMESA).

Nevertheless, member states who are signatories to treaties and conventions may seek to forbid or regulate trades, contracts, and investment between the locals and foreigners and their companies. To this end, they could still find a way around the seemingly bottleneck to deal with the issues of percentage ascription to LCRs, while making allowance for foreigners and their companies to be involved in the supply and contracting chains alongside the local contractors and suppliers.

Equally, the host countries usually review LCRs on reciprocity and comparative advantage principles in order to promote bilateral economic integration such as the case between the South African Development Community (SADC) and the Economic Partnership Agreement of the European Union (EU).

For instance, Nigeria like other countries in the world has LCRs law and policy aimed at empowering her citizens in supplies, contracts and in oil and gas related professional services. This preferential treatment is based on a fixed percentage rates attached to several areas and activities in the petroleum sector for the benefit of all deserving Nigerians – natural or artificial⁴⁰:

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Nigerian Oil and Gas Industry Content Development Act (2010) No. 2 Sections 1,2 & 3 (1), (2) & (3)

The law and policy on LCRs in Nigeria is implemented by the Nigerian Content Development and Monitoring Board (BOARD)⁴¹. The BOARD has no doubt existed since 2010 and has had several membership changes for the purposes of repositioning the Board for efficient and effective service delivery.

In US, the LCRs law is enforced by the Bureau of Lands Management pursuant to the provisions of the Mineral Leasing Act⁴² and BLM regulations Titled 43 (as amended) relating to the protection of the hosting communities or municipalities against the impact of oil and gas activities.

Also, in Brazil model LCRs law and policy⁴³, it provides: for minimum LCRs in the petroleum industry regarding licensing and bidding round for the award of oil and gas exploration and production rights. The LCRs law and policy in Brazil at a point worked economic hardship on the Brazilian economy and in 2007 the LCRs law and policy were relaxed so as to attract foreign investments into the oil and gas sector of the country.

Similarly, in Norway, the LCRs model was focused not on oil and gas but on production chain. In the course of time, the authorities in Norway decided to infuse local suppliers and contractors in contract biddings by foreign companies. The idea behind the infusion of the locals in contract biddings was to enable them to learn and acquire the needed expertise and skills preparatory for the locals to acquire the necessary technology and technical-know-how over time in the oil and gas sector⁴⁴.

In Mexico, Pemex that is, the national oil company of Mexico was saddled with the responsibility of developing the necessary strategy with which to implement the LCRs in the country and that directive was carried out on 26th May, 2009. Equally, the LCRs law and policy of Mexico further directed the Nacianal Financiere Developing Bank

⁴¹ Ibid Section 4, 5,6 & 7

⁴² 1920 (as amended)

⁴³ Law 9 478 of 8th August, 1997 (as amended). See also, Rhodes, T. (2017); Brazil proposes relaxation of global content requirements. <https://cms-lawnow.com>. Retrieved on 1st April, 2024.

⁴⁴ Lima, A. (2013), Local content requirements in oil and gas sector. <https://www.worldbank.org>. Retrieved on 1st April, 2024

to create a Trust Fund so as to channel public funds designated for programmes in the oil and gas sector with the aim of strengthening supply chain in the petroleum sector⁴⁵.

In Angola, the LCRs law⁴⁶ follows the traditional model which grants greater percentages of contracts, supplies and professional services to nationals and their companies relative to the opportunities accessible by foreigners and their companies in the oil and gas sector. Equally, the LCRs law in Ghana under the Ghana National Petroleum Corporation Law regulates all supplies, contracts and professional services for the benefit of all Ghanaians and their companies.

However, while it may be argued contextually, that the Petroleum Industry Act (PIA)⁴⁷ in Nigeria, which creates a separate provision for the socio-economic development and to address the environmental challenges of the oil and gas host communities-with the 3 percent operating annual expenditure of the preceding financial year from the settlor-whose operational license or lease is within the host community or communities as the case may be, is another variant of LCRs, the PIA, 2021, LCRs variant is a novel initiative because it is not only addressing the of localities of oil and gas exploration but it is also an amalgam of different concepts and principles drawn from the trust, company formation, sustainable development, seed model or bottom-up approach etc. Also, the PIA, 2021 LCRs is not directly or indirectly discriminatory and hence it is incapable of running counter of any regional or international treaty or conventions such as the COMESA, GATT, WTO and TRIMs respectively⁴⁸.

In summary, the PIA 2021, Chapter 3 on host communities is different from the general law on local content development requirements both in Nigeria and in many other countries. This is so because under the PIA 2021 LCRs, the emphasis is on natives of the host communities where the Settlor area of operation situates and impacts on

⁴⁵ Ley De Petroleos Mexicanos Transitory Article 13 of Federal Official Gazette of 28 Nov., 2008. See also Grunstein, M. and Baker, J. A. (2017) Local Content in a Petroleum Industry – Mexico. <https://www.bakainstitute.org>. Retrieved on 1st April, 2024

⁴⁶ Presidential Decree No 271/20 on LC Regulations of 20 Oct., 2020

⁴⁷ Petroleum (Local Content and Local Participation) Regulation 2013.

⁴⁸ Nwapi, C. (2016). A Survey of the Literature on Local Content policies in the oil and gas industry in East Africa in the School of Public Policy SPP Technical Paper, Vol. 9 issue 16.

the host communities negatively. And, the LCRs therefore seek to assuage the economic inequities and environmental degradation peculiar to the host communities and not to the entire citizenry in the country. To this end, the 3% opex given to the HCDDT's BoT is to be specifically used and deployed towards addressing social, economic and environmental challenges arising from oil exploration in the host communities by the Settlor.

VI. CONCLUSION

The paper clearly highlights that the Act has created a separate and novel host community development provision for addressing the identified social, economic and environmental needs of each host community. These needs are to be identified and developed by the settlor through due and strategic engagement with women, youth and community leaders. The Act further requires that a community development plan should be produced from the identified needs within the communities with a view to producing specific time based projects and schemes with which to address the identified needs and effects of any proposed petroleum operations in each host community. The establishment of the host communities' development trust, the setting up of the Board of Trustees and the trust fund are powered by the settlers in consultation with the host communities. However, the Act profoundly devolves so much power to the settlers to the extent that the Board of Trustees and the host communities are subservient to the settlers. This scenario clearly constitutes a clog in the wheel of the smooth administration of the host communities' development trust and thereby retards the ultimate objectives of the host communities' development. For instance, the funds of the trust, in practice, are managed at the instance of the settlers and this clearly runs counter to the organic powers of the Board of Trustees, hence the Board of Trustees is largely operated as a rubber stamp to the settlers.

VII. RECOMMENDATIONS

Apart from the general recommendations in the body of this paper, the following are specific recommendations, which if applied could go a long way to strengthening and deepening the objectives and benefits of the novel provisions of chapter 3 of the Act:

1. That the Act should be amended to enable the host communities to establish the trust. This will solve the challenges of mistrust and ownership question of the hydrocarbon in the land of the host communities over the fictitious legal ownership conferred on the settlor by the PIA, 2021
2. That the host communities should set up the Board of Trustees. This writes to set up the Board of Trustees by the host communities flow from recommendation 1 (above).
3. That the administrative fund of 5% should be increased to 10% while the reserve fund of 20% should be reduced to 15% because the present 5% administrative is insufficient to enable the trust to cater for the allowances for members of Board of Trustees, Management and Advisory Committees as well as pay audit fee, fund manager's fee, rent for office accommodation and general running of the trust.
4. That the 3% opex should be increased to 5% because the socio-economic needs of the host communities are high as well as the level of environmental degradation in the host communities is appalling.
5. That the calculation of the 3% opex should include the expenses incurred in new upstream petroleum production exploration and construction of refineries because presently the calculation of the 3% opex is premised on ordinary administrative and recurring expenses whereas if the cost of all exploration and construction of refineries were considered as expenses it could have translated to higher opex and thereby becoming beneficial to the communities towards meeting the enormous inequities suffered by the people in the oil and gas host communities.

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